

Serial No. 10/043,681

Office Action Dated: March 19, 2007

Response to Office Action Dated: May 14, 2007

REMARKS

Claims 11, 13-16 and 19-20 are pending in the application. By this amendment claims 11, 13 and 15 are amended. Claims 11, 13-16 and 19-20 remain pending in the application.

Claim Rejections Under 35 U.S.C. § 112

Claims 13-16, and 19-20 are rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement.

Independent claims 13 and 15 are amended herein to remove most of the objected to language and comply with 35 U.S.C. § 112, first paragraph.

With respect to the language of claim 15 including "the actuator arm being operable...", the specification as filed clearly discloses the operation of the actuator arm as recited in claim. The specification describes the invention of claim 15 and shown in FIG. 2 as follows: "This embodiment is especially simple to operate. For insertion and removal of the test strip 18, the actuating arm 50 of the lever 46 is pressed downwardly; that is, the lever 46 is pivoted in the counter-clockwise direction." (See Application, p. 7, ll. 11-14). Thus, the operation of the actuator arm as recited in claim 15 is clearly described in the specification as filed.

Accordingly, for at least the above-identified reasons, Applicant submits that claims 13 and 15 comply with 35 U.S.C. § 112, first paragraph and the objections thereto should be withdrawn. Claims 14, 16 and 19-20 which each depend from one of claims 13 and 15 should also now comply with 35 U.S.C. § 112, first paragraph. Accordingly, the rejections to claims 13-16, and 19-20 under 35 U.S.C. § 112, first paragraph, should be withdrawn and this action is requested.

Claim 11 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant has amended claim 11 as set forth above to remove the allegedly indefinite language. Accordingly, the objection to claim 11 under 35 U.S.C. § 112, second paragraph, should be withdrawn.

Claims 15, 16, 19 and 20 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant has amended claim 15 as set forth above to remove the allegedly indefinite language. Accordingly, the objection to claim 15 under 35 U.S.C. § 112, second paragraph, should be withdrawn. Claims 16, 19 and 20 depend from claim 15 and therefore include the amended language of claim 15. Accordingly, claims 16, 19 and 20 should also now comply with 35 U.S.C. § 112, second paragraph and therefore the rejection thereof should be withdrawn.

Claim Rejections Under 35 U.S.C. § 102

Claim 11 is rejected under 35 U.S.C. 102(b) as allegedly being anticipated by U.S. Patent No. 5,424,035 to Hönes et al. (hereinafter referred to as "Hönes").

Hönes discloses a test strip analysis system which consists of test strips and a test strip analysis apparatus. The analysis apparatus has a test strip holder for positioning the test strip in defined measuring position relative to a measuring unit.

As shown in FIGS. 1-3 of Hönes, the test strip holder 3 is provided with a test strip seat 20 on which the test strip 4 rests. FIGS. 2 and 3 of Hönes clearly illustrate that the test strip seat 20 is planar surrounding the measuring opening 23.

Claim 11 as amended herein, recites a test field system comprising at least one test strip with a test field, and a measuring device having a test strip receiver for measuring the test field, the test strip receiver including a support surface for the test strip and positioning means for holding the test strip inserted in the strip receiver so that at least a section of the test strip containing the test field is held in a definite position relative to the support surface. Claim 11 further recites the strip receiver having two holding means spaced from one another on edge areas of the support surface for holding fast opposing ends of the test strip substantially adjacent the support surface, and a projection extending outwardly from the support surface between the two holding means and adjacent a measuring opening in the support surface, the projection defining a surface vertically displaced from the support surface such that the test field of a test strip inserted

in the test strip receiver is supported by the surface of the projection and spaced apart from the support surface at the measuring opening, and held substantially adjacent the support surface at the opposing ends of the test strip via the two holding means, the test strip being flexible and bent about the projection so that the test area is securely held adjacent the surface of the projection at the measuring opening.

Clearly, Hönes does not teach a strip receiver having two holding means spaced one from another on edge areas of the support surface for holding fast opposing ends of the test strip adjacent the support surface. Hönes includes "part of the test strip seat 20 is, in the area in which the front section 12 is located when in the measuring position, designed as a support 24, which is offset in height relative to the middle plane 22 of the test field area 6." (See Hönes, col. 5, ll. 4-8). See also Hönes Figs. 3 and 4. Accordingly, the Hönes strip seat 20 does not include holding means spaced apart from one another for opposing ends of a test strip substantially adjacent the support surface as recited in amended claim 11. Further, the test strip seat 20 of Hönes does not include a projection extending outwardly from the support surface between the two holding means and adjacent a measuring opening in the support surface as set forth in claim 11 wherein a test strip inserted in the strip receiver is held substantially adjacent the support surface at the opposing ends of the test strip via the two holding means, the test strip being flexible and bent about the projection so that the test area is securely held adjacent the surface of the projection at the measuring opening.

Anticipation under § 102 requires the presence in a single prior art reference disclosure of each and every element of the claim invention, arranged as in the claim. Lindemann Maschinenfabrik GMBH v. American Hoist and Derrick Co., 221 USPQ 481, 485 (Fed. Cir. 1984).

For at least the above-identified reasons Hönes does not teach each and every element of amended claim 11 as arranged in the claim. Thus, it cannot be maintained that Hönes anticipates claim 11 and the rejection of claim 11 under 35 U.S.C. 102(b) based on Hönes, should be withdrawn.

Claims 13 and 14 are rejected under 35 U.S.C. 102(b) as allegedly being anticipated by Gassenhuber (US 4,934,817).

Gassenhuber discloses a device for optically evaluating test strips including a housing carrying the measuring optics and a test strip holder removably insertable into the housing. The Gassenhuber device includes a two-armed pressing lever 58 including a lever arm 60 at one end thereof and a leaf spring 62 at the opposing end. The lever arm 60 extends from a pivot axis 56 towards the insertion end of the test strip holder (See Figs. 2 and 3). Gassenhuber further discloses that a test 20 in the inserted position (Figs. 2 and 3) the test strip is forcibly held in place by a clamping apparatus which includes a notch 80 and a detent ball 82 associated with the notch which is biased toward the notch 80 by a leaf spring 84. The detent ball 82 and leaf spring 84 are clearly separate components and operate independently from the pressing lever 58.

Claim 13 as amended herein recites a test strip system, including at least one flexible test strip with a test field, and a measuring device for measuring the test field, the measuring device having a strip receiver including a support surface for the test strip and positioning means for securing the position of the test strip inserted into the strip receiver. Claim 13 further recites a spring arm extending outwardly from the support surface toward the inner end of the strip receiver that is elastically deflectable in a direction toward the support surface, and a counter-pressure surface overlying the spring arm and spaced apart therefrom. The spring arm further including a detent engageable with a detent recess defined by the test strip for securing the position of the test strip relative to the strip receiver.

Nothing in Gassenhuber teaches a spring arm extending outwardly from the support surface and toward the inner end of the strip receiver as recited in amended claim 13. Clearly, the lever arm 60 disclosed of the Gassenhuber device does not extend outwardly from the support surface 32 as recited in claim 13. Further, the lever arm 60 of Gassenhuber extends toward the insertion end of the strip receiver as opposed to the claimed spring arm which extends toward the inner end of the strip receiver. Accordingly, the Gassenhuber lever arm is oriented in a direction which is opposite the claimed invention.

Further, the lever arm of Gassenhuber does not include a detent engageable with a detent recess defined by the test strip for securing the position of the test strip relative to the strip receiver as recited in claim 13. Clearly,

the detent ball 82 of Gassenhuber and the associated leaf spring 84 is not a part of the lever arm 60. Thus, the lever arm of Gassenhuber does not include a detent engageable with a detent recess defined by the test strip as recited in amended claim 13.

Accordingly, for at least the above-identified reasons, Gassenhuber does not disclose each and every element of the claim invention, arranged as in the claim. Thus claim 13 is not anticipated under 35 U.S.C. 102(b) by the Gassenhuber reference and the rejection thereof should be withdrawn.

Claims 15 and 16 are rejected under 35 U.S.C. 102(b) as allegedly being anticipated by Gassenhuber.

Claim 15 as amended herein clearly recites a test strip system including a test strip with a test field and a measuring device for the test strip, the measuring device having a test strip receiver including a support surface for the test strip and positioning means for securing the position of the test strip inserted in the strip receiver such that at least a portion of the test strip containing the test field assumes a definite position relative to the support surface. Claim 13 is amended herein to further recite the support surface for carrying the test strip during both the insertion and testing thereof.

Clearly, the Gassenhuber includes a groove bottom 32 which carries a test strip during an insertion process; for carrying out a measurement of the test strip, a cam 64 is turned such that the test strip is moved from the groove bottom 32 and pressed against a support plate 38. Thus, Gassenhuber does not teach a support surface for carrying the test strip during both of the insertion and testing thereof as recited in amended claim 15.

Accordingly, for at least the above-identified reasons, Gassenhuber does not disclose each and every element of claim 15 as arranged as in the claim. Thus claim 15 is not anticipated under 35 U.S.C. 102(b) by the Gassenhuber reference and the rejection thereof should be withdrawn.

Because claim 16 depends from and thereby incorporates the limitations of claim 15, claim 16 is likewise deemed not anticipated by Gassenhuber for at least the reasons set forth for claim 15. Accordingly, the rejection of claim 16 under 35 U.S.C. 102(b) over Gassenhuber should also be withdrawn.

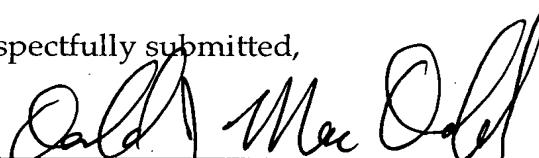
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Conclusion

In view of the foregoing, it is respectfully submitted that claims 11, 13-16 and 19-20 are allowable. All issues raised by the Examiner having been addressed herein, an early action to that effect is earnestly solicited.

Applicant believes that no fee is due for this Response, however, should there be any deficiency in fees associated with the filing of this Response, please charge the Deposit Account No. 13-0235.

Respectfully submitted,

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